IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:: J U D G M E N T ::

S.B. CIVIL FIRST APPEAL NO.107/1981

Shri Prakash & Anr.
Vs.
Shri Sitaram.

DATE OF JUDGMENT :: 23.11.2007

PRESENT

HON'BLE MR. BHANWAROO KHAN, J.

Mr. Vikas Balia, for the appellants.
Mr. B.S. Jodha, for the respondent.

The instant first appeal has been filed by the appellants-plaintiffs against the judgment dated 31.7.1981 passed by the Additional District Judge No.1, Jodhpur in Civil Original Case No.1/78 wherein suit for partition on the basis of Will executed by their grand-father filed by them against the respondent-defendant was decreed only for the share of immovable properties but for movable properties, the same has been dismissed.

In brief, facts of the case are that the plaintiffs filed a suit against the defendant who is

brother on the basis of a Will made by their grand-father excluding their father and on the basis of the said Will, the plaintiffs claimed for partitions of the properties mentioned in para No.3 of the plaint.

The defendant in his reply denied the execution of Will made by their grand-father and pleaded that Prabhu Ji, their grand-father was having two houses, out of which one house was given to the defendant by executing a Will in his favour. The house-in-dispute was never Willed by Prabhu Ji. There was no such immmovable property as mentioned in the plaint and the house alleged to have been Willed belongs to have and is in his possession.

The trial court framed as many as 8 issues and both the plaintiffs appeared in support of their plaint. The plaintiffs' father was also examined on their behalf. In rebuttal, the defendant and one witness was examined. The trial court after going through the entire evidence and documents produced, decreed the suit for immovable property by giving preliminary decree declaring 1/3rd share in each of the plaintiffs and defendant in the house of Prabhu Ji as Willed and dismissed the partition of the movable property against which plaintiffs-appellants preferred this appeal.

Heard learned counsel for the parties.

The appeal is only for partition of movable property which is mentioned in the plaint. The lower court while examining the evidence and the documents relating to the partition of their movable property observed that no reliable evidence has been submitted or produced by the plaintiffs for the ownership and possession of the movable property and at the time of arguments in the lower court, learned counsel has not put any reliable evidence in support of the said movable property. There is only the statements of plaintiffs against which rebuttal of defendant is there regarding their movable properties. Simply by mentioning the movable properties in the plaint and stating on oath Will not prove that the property belongs to Prabhu Ji, their grand-father who was intending to divide the said property amongst three. The defendant also has specifically denied to have the property of Prabhu Ji in his possession or it was ever given by Prabhu Ji to him. The cross-examination of PW-1 Prakash and PW-2 Satyanarayan does not inspire any confidence about the movable property which alleged to have been of their grand-father. The movable property prima-facie if is in possession of anybody then it is presumed that the ownership of the property belongs to the person who is having the possession. In absence of any credible and reliable testimony of the plaintiffs it cannot be presumed to have been proved that the movable property belonged to

Prabhu Ji. The mentioning of word 'movable property in the Will itself would not confer any right on the parties unless it is specifically proved that movable property was in the ownership of the executor till then. No such presumption of ownership of the movable property can be drawn. The plaintiffs have utterly failed in establishing that the movable property was of executor Prabhu Ji and the same was in the possession of the defendants. The lower court rightly dismissed the plea of the partition of the movable property as the plaintiffs could not prove the ownership of the property of Prabhu Ji. The issue relating to this was rightly decided against the plaintiffs and the trial court has not committed any illegality and irregularity while deciding this issue against the plaintiffs.

No other points or issues were pressed at the time of arguments by the learned counsel for the plaintiffs-appellants.

In view of the discussion above, the first appeal stands dismissed. There shall be no order as to costs.

(BHANWAROO KHAN)J.

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